The Reliability of INS's Traffic Forecasts.

34. A further area of concern relates to the reliability of the traffic forecasts used by INS in developing its CEA rates. The following table (Table H) sets forth the test period traffic forecasts used by INS in its Tariff Filings from 2004 to 2017 and then compares those forecasts to a simple average of the actual demand reported by INS in its Tariff Filings for the two years encompassed by the applicable test period forecast.

Test Period	Projected Demand[42]	Actual Demand[43]	Difference
7/1/04 to 6/30/05	876,231,538 min.	930,533,227 min.	54,301,689 min.
7/1/06 to 6/30/07	1,296,905,198 min.	1,707,544,370 min.	410,639,172 min.
7/1/08 to 6/30/09	2,346,089,248 min.	2,576,662,181 min.	230,572,933 min.
7/1/10 to 6/30/11	3,481,819,561 min.	3,756,655,810 min.	274,836,249 min.
7/1/12 to 6/30/13	3,339,631,164 min.	3,165,619,256 min.	(174,011,908) min.
7/1/13 to 6/30/14	2,925,535,070 min.	2,742,967,138 min.	(182,567,932) min.
7/1/14 to 6/30/15	2,019,322,322 min.	2,470,990,085 min.	451,667,763 min.
7/1/16 to 6/30/17	2,508,443,160 min.	na	na

35. As can be seen from Table H, there was a lot of variation from year to year in INS's test period traffic forecasts. Table H also shows that INS's test period traffic forecasts were not

[42] The source of the "Projected Demand" is INS's Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

[43] This figure is a simple average of the actual demand reported by INS in its Tariff Filings for the two year period encompassed within the test period. Thus, for example, the actual demand compared to Projected Demand for the test period 7/1/04 to 6/30/05 would be a simple average of the reported actual demand for 2004 and 2005.

very accurate when compared to actual demand. Indeed, for the test periods up to and including the 7/1/10 to 6/30/11 test period, INS consistently underestimated demand by an average of 240 million minutes per year. Further, for two test periods (7/1/06 to 6/30/07 and 7/1/14 to 6/30/15), INS underestimated the demand by at least 400 million minutes.

36. Because INS's CEA rates are derived by dividing its projected revenue requirement by its traffic forecast for the applicable test period, an underestimation of the projected demand necessarily results in a higher rate. Moreover, to the extent that the disparity is large enough, it can result in the carrier exceeding its allowed rate of return – a situation that has occurred with respect to INS's CEA service in a number of years.[44]

37. Finally, INS's test period forecasts, particularly in the more recent periods (2012 to 2016), are not consistent with AT&T's billing data which shows that AT&T's INS volumes have steadily increased over that same period. *See* Habiak Decl. ¶ 54. Obviously, to the extent that INS's test period traffic forecasts are understated, INS rates would be inflated (all other factors remaining constant).

INS's Inclusion of "Uncollectible Revenues" in its Revenue Requirement.

38. An additional area of concern relates to INS's inclusion of "Uncollectible Revenues" in its projected revenue requirement. This practice appears to have started in connection with INS's 2010 Tariff Filing, wherein it noted that during 2007, it "began to

[44] *See* Ex. 16, INS 2006 Tariff Filing, at 1 (noting that in 2005, INS experienced a return of 27.89%); Ex. 17, 2008 Tariff Filing, at 1 (for the period 2005/2006, INS experienced a return of 38.63%); Ex. 20, INS 2013 Tariff Filing, at 1 (INS's regulated revenue resulted in a "return of 64.57% on its interstate investment").

experience an increase in its uncollectible revenues from an [IXC] as a result of billing disputes over the classification and quantification of interstate access minutes related to traffic terminated by the IXC to ILEC customer locations in Iowa."[45] While the specific IXC is not identified, it is believed to be Sprint, which is involved in a lawsuit in Iowa federal district court where INS is seeking to collect unpaid tariff charges.[46] Rather than wait for that lawsuit to be resolved, INS appears to have simply included the amount of $2,893,575 in its 2010 Tariff Filing, thereby inflating its revenue requirement as well as its rates.[47] Worse yet, by seeking to recover these amounts through its rates, INS effectively required its other CEA customers (including AT&T) to pay for service that it allegedly provided to Sprint.[48]

39. The following table (Table I) identifies for each filing period since 2010, INS's Total Revenue Requirement, INS's Base Revenue Requirement (i.e., Total Revenue Requirement less Uncollectible Revenues), and the "Uncollectible Revenues" that INS has sought to recover through its CEA rates. Table I also includes, for each filing period, a calculation of Uncollectible Revenues as a percentage of the Base Revenue Requirement.

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[45] *See* Ex. 18, INS 2010 Tariff Filing, at 2. While the work papers underlying INS's 2008 Tariff Filing indicate that the Access Division's overall revenue requirement included "Uncollectible Revenues" of $3,369,633 (*see* Section 5, Part 64 Separations, Schedule S-1, Line 15), that amount was not allocated to the interstate jurisdiction for ratemaking purposes. *See id.*, Section 4, Part 36 Separations, Schedule S-1, Line 15.

[46] *See, e.g., Iowa Network Servs. v, Sprint Commc'ns Co.*, No. 4:10-CV-102 (S.D. Iowa).

[47] *See* Ex. 18, INS 2010 Tariff Filing, at 2.

[48] In its April 2017 Tariff Filing, INS did not allocate any "Uncollectible Revenues" to its new contract tariff service, thus exempting those customers from having to bear any of these alleged costs. *See* Ex. 46, INS's April 2017 Tariff Filing, Contract Tariff Support, Section 3, Schedule A-1, Line 15.

	Total Rev. Req.	Base Rev. Req.	Uncollectibles	% Uncollectibles
2010	$28,671,481	$25,777,906	$2,893,575	11.2%
2012	$20,839,117	$18,377,183	$2,461,934	13.4%
2013	$26,254,447	$22,293,439	$3,961,008	17.8%
2014	$26,211,200	$22,756,744	$3,454,456	15.2%
2016	$33,428,538	$16,903,398	$16,525,230	97.8%

40. As can be seen from Table I, since 2010, INS has included in its revenue requirement calculations almost $30 million in so-called "Uncollectible Revenues." For the filing periods 2010 through 2014, Uncollectible Revenues averaged about $3.2 million per year and constituted between 11 percent and 18 percent of INS's Base Revenue Requirement. In 2016, however, that percentage increased to 97.8 percent of the Base Revenue Requirement. In other words, almost half of INS's 2016 Total Revenue Requirement consisted of Uncollectible Revenues.

41. The next table (Table J) sets forth an estimate of the potential rate impact of INS's having included these amounts in its revenue requirement.

	"Uncollectible Revenues"[49]	Projected Traffic[50]	Potential Rate Impact[51]
2010	$2,893,575	3,481,819,561	$0.00083
2012	$2,461,934	3,339,631,164	$0.00074
2013	$3,961,008	2,925,535,070	$0.00135
2014	$3,454,456	2,019,322,322	$0.00171
2016	$16,525,230[52]	2,508,443,160	$0.00659

42. As can be seen from Table J, over the period 2010 to 2016, the potential rate impact of INS's having included Uncollectible Revenues in its revenue requirement was between 0.074 cents per minute and 0.659 cents per minute. Given that all of the so-called "Uncollectible Revenues" are the subject of litigation that disputes whether the underlying rates were "properly billed," there was no justification for this rate treatment, which had the obvious impact of inflating rates.[53] Moreover, INS's counsel has admitted in response to informal discovery that **[[BEGIN**

[49] The source of the "Uncollectible Revenues" is INS's Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

[50] The source of the "Projected Traffic" is INS's Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

[51] The rate impact was estimated by dividing the "Uncollectible Revenues" by the projected traffic.

[52] A portion of this amount appears to relate to the charges that are the subject of dispute in this proceeding. The fact that AT&T contends that these amounts were not "properly billed" and INS is still seeking to collect them via its lawsuit against AT&T raises the same issue as to whether these amounts can properly be included in INS's revenue requirement as "Uncollectible Revenues" and recovered from INS's current customers through its rates.

[53] *In re Annual 1988 Access Tariff Filings*, 3 FCC. Rcd. 1281, ¶ 245 (1987) ("Uncollectible revenues are included in interstate revenue requirements to reflect *properly billed* revenues which cannot be collected." (emphasis added)); *In re Telecomms. Relay Serv., N. Am. Numbering*

CONFIDENTIAL]] [redacted] [redacted] [[END CONFIDENTIAL]]

43. Finally, the inclusion of these "Uncollectible Revenues" in INS's revenue requirement (together with INS's voluntary retention of rates that are lower than the rates allegedly justified by its revenue requirement) fully explains the so-called negative rates of return that INS has reported in its recent Tariff Filings. To the extent that these "Uncollectible Revenues" are excluded from INS's revenue requirement, these negative returns either disappear or are significantly reduced. Take, for example, INS's 2016 Tariff Filing, in which INS reported a rate of return of -171.69% on a Total Revenue Requirement of $33,407,808. *See* Ex. 22, 2016 Tariff Filing, at 2, 4–5. If the "Uncollectible Revenues" ($16,525,230) are excluded from INS's Total Revenue Requirement, the projected revenues of $22,496,381 exceed the Base Revenue Requirement ($16,903,308) by about $5.6 million resulting in a positive return. It should further be noted that if the "Uncollectible Revenues" are excluded, the maximum rate that INS could charge for CEA service would be $0.00673 per minute (i,e., $0.01332 per minute minus $0.00659 per minute), which is more than two tenths of a cent lower than INS's current rate ($0.00896 per minute).[55]

Plan, 17 FCC. Rcd. 24952, ¶ 57 (2002) (noting that carriers cannot record universal service contributions as "uncollectibles" where those amounts cannot be properly billed to customers).

[54] *See* Ex. 59, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T), at 2 (dated Mar. 23, 2017).

[55] As previously noted, INS did not allocate any "Uncollectible Revenues" to its new contract tariff/volume discount service, thus exempting the customers of that service from having to bear any of these alleged costs. *See supra* note 49. This difference in ratemaking largely appears to account for the difference between INS's current CEA rate ($0.00896 per minute) and its proposed new contract/volume discount rate ($0.00649 per minute). Indeed, when the impact of the inclusion of "Uncollectible Revenues" in its 2016 revenue requirement ($0.00659 per

The Overall Reasonableness of INS's Rates for CEA Service.

44. Based on my analysis to date, serious issues exist regarding the reasonableness of INS's rates for CEA service. Notwithstanding the fact that access rates have declined precipitously since 1989, INS's CEA rates have remained relatively constant and, in recent years, have actually increased, which makes little sense. Further, no documentation has been provided explaining the methodology used in calculating the networks costs (*i.e.*, lease costs) that have been allocated to INS's Access Division, and the evidence that has been made available strongly suggests that INS's Access Division has been allocated a disproportionate share of those costs. In addition, questions exist regarding INS's allocation of costs between its interstate and intrastate traffic. Finally, there is no justification for INS's inclusion of the so-called "Uncollectible Revenues" in the revenue requirements used to generate its CEA rates. Those amounts are the subject of ongoing litigations wherein the issue of whether those amounts were "properly billed" is at issue. Moreover, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** As such, those amounts should not have been included in the rate requirements used to generate INS's CEA rates.

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minute) is subtracted from the rate INS claims is "supported" by its 2016 revenue requirement ($0.01332 per minute), the resulting rate ($0.00673 per minute) is nearly the same as its new proposed contract tariff rate of $0.00649 per minute.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2017.

Daniel P. Rhinehart

Exhibit C

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

REPLY DECLARATION OF
DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"), and my job title is Directory-Regulatory. My responsibilities in that job as well as my prior experience are set forth in the initial declaration that I submitted in this proceeding on June 8, 2017.

2. In that earlier declaration, I described the work I had done reviewing INS's CEA rates and the support for those rates, and I identified and explained my concerns regarding the reasonableness of INS's CEA rates. As a result of that work, I noted that INS's rates had remained relatively flat over the past 30 years and contrasted that situation to both (i) the trend for switched access rates more generally and (ii) the fact that INS had more aggressively lowered

the rates it charges to other entities. I also expressed skepticism as to INS's apparent inability to lower its rates and discussed a number of specific issues pertaining to various aspects of INS's prior rate submissions, including its handling of the Access Division's network costs, its apparent inability to reliably and accurately forecast demand for its CEA service, and its inclusion of so-called "Uncollectible Revenues" in the Access Division's revenue requirement even though the amounts at issue were being challenged as not having been properly billed, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** and INS was still seeking to collect them.

3. In this reply declaration,[1] I have been asked to comment on INS's answering submission, particularly the sections that address the matters discussed in my initial declaration. In that connection, I have reviewed the declaration of Jeff Schill as well as the sections of INS's Legal Analysis that discuss ratemaking generally (*see* Legal Analysis in Support of the Answer of INS, at 29–43 (filed Jun. 28, 2017) ("INS Legal Analysis")) and that respond to the specific issues raised in my initial declaration (*see id.* at 43–64).

4. As discussed in greater detail below, neither Mr. Schill nor INS has responded adequately to the specific concerns raised in my earlier declaration. With respect to the Access Division's network costs (which account for as much as 75 percent of its revenue requirement (*see* Rhinehart Decl. ¶ 15 Table B)), INS still has not produced the data needed to evaluate the reasonableness of the lease costs that the Access Division pays to use INS's network. In fact, Mr. Schill's discussion of the treatment of these costs appears to substantiate my concern that the network costs allocated to the Access Division are excessive. Likewise, INS has not justified its

[1] To distinguish between my initial declaration and this reply declaration, my initial declaration will be cited as "Rhinehart Decl.," whereas this declaration will be cited as "Rhinehart Reply Decl."

inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement, and its claim that it **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

5. The remainder of my reply declaration is organized as follows. Part I sets forth a number of general observation that I have regarding various statements made by either Mr. Schill or INS about the Commission's rate regulation regime. In Part II I respond to Mr. Schill's comments regarding the specific concerns that I identified in my initial declaration.

I. General Observations Regarding the Commission's Rate Regulation Regime

6. Before discussing Mr. Schill's specific criticisms of my declaration, I would like to make a few general observations regarding Mr. Schill's testimony as well as INS's discussion in its Legal Analysis of the manner in which rates are regulated on a rate of return basis.

7. *First,* I am perplexed by Mr. Schill's suggestion that I do not have the requisite expertise to address the reasonableness of INS's rates. In making this point, Mr. Schill does not question the fact that I am familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis. INS Answer to the Formal Complaint of AT&T Corp., Exhibit A, Declaration of Jeff Schill ¶ 4 (filed Jun. 28, 2017) ("Schill Decl."). Instead, he argues that INS is a "dominant carrier," and not a "Rate of Return Carrier" and implies that that distinction has some significance. *Id.* Putting to one side what INS's proper classification is as a CEA provider, there is no question that INS submits its rates pursuant to the same rules that apply to "Rate of Return Carriers" and that the exact same type of

analysis used in evaluating the rates of such carriers applies to INS's rates.[2] In fact, at various points in his declaration, Mr. Schill seeks to justify the reasonableness of INS's rates on the grounds that INS purportedly calculated its rates based on those rules. *See, e.g.*, INS Legal Analysis at 39.

8. *Second,* in its Legal Analysis INS discusses the "original form of ratesetting utilized by the FCC" (*see* INS Legal Analysis at 30), and seems to suggest that INS follows that approach to the letter. However, INS's method of calculating its rates is, in actuality, a variation of the way in which cost of capital analysis is generally done. That is because a major component of the Access Division's costs, i.e., its network costs, are not handled in the traditional manner. Because INS does not own its network facilities but rather leases them from an affiliate, those costs are handled entirely as an expense. As a consequence, no capital cost analysis is done as to the network cost component, which accounts for as much as 75 percent of the Access Division's overall revenue requirement. Further, there is no detail provided in INS's regulatory filings as to the derivation of those lease costs, nor was such material provided as part of the pre-filing discovery process.

9. *Third*, the fact that a carrier regulated on a rate of return basis follows the Commission's procedures in submitting its rates does not, as both Mr. Schill and INS assert repeatedly throughout their respective submissions (*see, e.g.*, Schill Decl. ¶¶ 14, 20; INS Legal Analysis at 15, 31, 51), mean that the resulting rates are reasonable. In addition to following the Commission's procedures, it is imperative that, among other things, the cost inputs used in

[2] *E.g.*, 47 C.F.R. § 61.38 (for a tariff change, the carrier should submit: "(i) A cost of service study for all elements for the most recent 12 month period; (ii) A study containing a projection of costs for a representative 12 month period; (iii) Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues.").

developing the rates be shown to be reasonable. Further, the normal way that the reasonableness of those cost inputs would be assessed is for the back-up support for those cost inputs to be provided. In the case of the lease costs that are embedded in INS's Cable & Wire expense account, however, no such data have been provided – not in INS's regulatory filings, not in the discovery material produced to date, and not as an exhibit to Mr. Schill's declaration. In fact, the lease costs are not separately broken out in INS's regulatory filings, but are rather lumped together with INS's other network expenses. It is a proverbial "black box" and thus not capable of being scrutinized based on the information that INS has elected to disclose.

10. *Fourth*, the fact that INS's rates did not generate revenues that exceeded INS's authorized rate of return does not, as INS contends (*see, e.g.*, INS Legal Analysis at 39) mean that its rates are reasonable. If, for example, the revenue requirement was inflated by the inclusion of inappropriate costs, that would render any such result meaningless. Likewise, the failure to properly project demand would also undermine any such conclusion. Further, these observations are equally applicable to a rate that purportedly generates a negative rate of return.

11. *Fifth,* the fact that INS's rate filings were prepared with the assistance of outside consultants (*see* INS Legal Analysis at 39) does not establish that the resulting rates are reasonable. Similarly, the fact that a regulatory agency may have reached certain conclusions in some earlier rate proceeding does not, as INS repeatedly seems to suggest, inoculate that carrier's rates from further scrutiny as to a particular issue in a later rate proceeding. Indeed, INS's apparent reliance on Commission statements made in INS's initial tariff proceeding almost 30 years ago regarding cross subsidization (*see, e.g.*, INS Legal Analysis at 41–42) is at odds with my understanding of the Commission's regulatory rate regime.

12. *Sixth,* the fact that INS's CEA rate is a flat per minute rate that combines both switching and transport does not, as INS seems to suggest (*see* INS Legal Analysis at 39), mean that it is reasonable. Indeed, the mere structure of a rate says nothing about its reasonableness. To determine the reasonableness of a flat per-minute, combined rate, one must do the same type of rate reasonableness analysis that is done with respect to any other rate. Similarly, the fact that INS's rates are not subsidized by the Connect America Fund or the Universal Service Fund does not mean, as INS asserts (*see* INS Legal Analysis at 41), that its rates are reasonable. The lack of such funding is irrelevant to the rate reasonableness determination.

13. *Finally,* repeated assertions that its allocations "are compliant with the Commission's accounting rules," that its PIU factor is "based on the best available information that is has," and that its forecasting is based on a "good faith attempt," (*see* INS Legal Analysis at 51, 59), and so on are not a substitute for actual evidence demonstrating that the carrier's rates are reasonable. Yet throughout their respective submissions, both Mr. Schill and INS resort to such pronouncements, and such pronouncements alone, in responding to specific concerns that I raised as to INS's rates in my initial declaration. As I explain in greater detail below, those concerns remain unanswered.

II. Responses to INS's Criticisms Regarding the Specific Concerns Addressed in My Initial Declaration

14. In my initial declaration I raised seven specific concerns regarding INS's rates. In his declaration, Mr. Schill purports to address each of those concerns. Those concerns are also addressed in INS's Legal Analysis. However, the points raised in INS's Legal Analysis are nearly identical to the points raised in Mr. Schill's declaration. Consequently, my declaration focuses and cites to Mr. Schill's declaration.

A. The Overall Level of INS's CEA Rates

15. Neither Mr. Schill nor INS takes issue with my observation that INS's CEA rates have remained relatively constant over the past thirty years, nor do they dispute that switched access rates generally and the rates that INS charges for certain of its non-CEA services have decreased more dramatically. Instead, they take the position that that INS's CEA rates are, in essence, unique unto themselves; that data regarding other rates and rate trends is simply irrelevant. *See* Schill Decl. ¶¶ 5, 7–13; INS Legal Analysis at 43–47. That position, as well as Mr. Schill's other arguments regarding the level of INS's CEA rates, is groundless.

16. *First,* Mr. Schill's claim that "CEA service is not one that is comparable to access service that is provided by other carriers" (*see* Schill Decl. ¶ 5) is difficult to reconcile with INS's claim that it is just another form of switched access service. *See* INS Legal Analysis at 22 (discussing whether INS's tariff authorizes the billing of CEA rates for access stimulation traffic). Further, Mr. Schill overstates the potential impact on rates of differences between CEA service and other switch services. For example, the fact that CEA service is provided in rural areas may account for some of the differences in historic pricing trends, but it does not explain the huge differential that exists between the trend line for INS's CEA serve (a decline of about 23% in the period 1988 to 2010) and the trend line for switched access rates generally (a decline of about 80% over the same period).

17. *Second*, Mr. Schill's criticisms of my observations regarding the potential rate impacts of INS's explosive growth and the fact that INS's switching equipment is largely depreciated (*see* Schill Decl. ¶ 9) are not accurate. Indeed, Mr. Schill's assertion that depreciation expense is no longer a significant rate driver proves my point. Further, the tremendous growth in call volumes that INS has experienced (particularly during the period 2004

to 2011) also supports the conclusion that INS's CEA rates should have declined more significantly than they have. Additionally, the fact that INS's call volumes have declined somewhat since 2011 does not explain why during the period 1998 to 2010 switched access rates declined by almost 80 percent but INS's rates only declined by 23 percent.

18. *Third*, Mr. Schill's response to my observation that INS's rates do not appear to have benefited from cost efficiency gains (*see id.* ¶ 10) is a *non-sequitur*. Rather than present evidence showing that such gains were actually realized and are reflected in INS's CEA rates, Mr. Schill instead assumes (without presenting any evidentiary support) that such gains were achieved but then asserts (again without any evidentiary support) that they were "offset by increases in access stimulation traffic volumes, and the need to augment facilities to handle that traffic." This claim not only is unsupported but does not make economic sense. Efficiency gains are generally not lost with the addition of capacity, especially when that capacity is being added to handle large volumes of traffic directed to a single location (or a handful of locations), which is generally the case with access stimulation traffic. In fact, in such circumstances, one would expect that the increased volumes would result in the realization of economies of scale.

19. *Fourth*, Mr. Schill's assertion that "the reductions in the **[[BEGIN THIRD PARTY HIGHLY CONFIDENTIAL]]** [redacted] **[[END THIRD PARTY HIGHLY CONFIDENTIAL]]** and the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** do not have any bearing on whether [INS's] CEA service rates must be reduced" (*see id.* ¶ 12) is wholly unconvincing. To begin with, there is no question that such rate reductions occurred with respect to those services and that they were large. Further, it defies logic to contend that providing CEA service is **more costly** than providing small increments of capacity that are

tailored to specific customer needs. Indeed, that cost proposition is completely at odds with the economic rationale relied on by the Commission in initially approving CEA service in 1988. Additionally, the claim that the Commission's *Alpine* decision dramatically changed the transport costs incurred by the Access Division is not only unsupported, it was disregarded by the Commission in *Alpine* because it could not be substantiated. *See AT&T v. Alpine Commc'ns*, 27 FCC Rcd. 11511, ¶ 48 (2012) ("The parties stipulated, however, that 'INS has not quantified any resulting actual reduction in the rates paid by IXCs.'").

20. *Finally*, Mr. Schill effectively concedes that INS's CEA rates are excessive in discussing the rate impact of INS's inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement. *See* Schill Decl. ¶ 12. In that connection, he admits that the rate "would be $0.00673 – a full half cent less than in 1989" (*id.* ¶ 10) and more than two tenths of a cent less than the current rate. Moreover, as I pointed out in my initial declaration that rate could be as low as $0.003624 per minute. *See* Rhinehart Decl. ¶12.

B. INS's Handling of Network Investment Costs

21. Mr. Schill does not dispute that network costs constitute a significant percentage of the Access Division's overall revenue requirement. He also confirms that the Access Division leases its network facilities from another INS division, i.e., the IXC Division. *See* Schill Decl. ¶ 14. Mr. Schill further contends that the Access Division is "required by the FCC to lease capacity from the IXC Division" and claims that I alleged that "[INS]'s investments in its fiber network have not been accurately recorded in [INS's] books," citing to paragraph 14 of my initial declaration. *See id.* Neither of these allegations is accurate. Additionally, Mr. Schill's discussion of the lease costs that the Access Division pays to the IXC Division is deficient in multiple respects.

22. *First,* at no point in my initial declaration did I assert that INS's investment in its fiber network was not accurately recorded on INS's books. Nowhere in the paragraph that Mr. Schill cites as support for that proposition (i.e., paragraph 14) do I say anything about the lawfulness or accuracy of INS's accounting practices. To the contrary, in that paragraph, I accurately reported that none of the investment in INS's fiber network is recorded on the Access Division's books, and I further reported accurately that "all investment in Central Office Transmission Equipment (Account 2230) and in Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions" – which is exactly what INS's Tariff Filings disclose. *See* Rhinehart Decl. ¶ 14.

23. *Second,* Mr. Schill's assertion that the Access Division is "required by the FCC to lease capacity from the IXC Division" (*see* Schill Decl. ¶ 14) is not accurate. While it is true that the Commission's regulations require the Access Division to "have separate books of account" and prohibit joint ownership of "transmission or switching facilities," (*see In re Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, 98 F.C.C.2d 1191, ¶ 9 (1984) ("*Fifth Report and Order*")), they do not "require" the Access Division to lease such facilities from the IXC Division, and the Access Division does not lease its switching equipment from the IXC Division. Further, no such requirement is included in the Commission's 1988 decision (what Mr. Schill refers to as the FCC's 214 Order) approving INS's initial Section 214 application. That decision did approve INS's leasing of network transport capacity from the IXC Division (based on the facts and circumstances at the time of such approval) but it did not "require" that approach.

24. *Third,* contrary to Mr. Schill's claims, INS's Tariff Filings do not break out on a separate basis the lease costs that the Access Division pays to the IXC Division, nor do they

report that the amounts in the Cable &Wire Facilities account are equal to the lease payments made by the Access Division to the IXC Division. In fact, there is no specific mention of lease costs or of the IXC Division in INS's Tariff Filings. That is not to say that such costs are not included the Access Division's revenue requirement. I have no doubt that they are. My simple point is that they are not broken out separately but are rather bunched together with INS's other network costs. And, even more significantly, no documentation is provided as to the method by which the lease costs are calculated, nor is any information provided regarding the reasonableness of those costs as compared to alternatives. Further, Mr. Schill's assertion that the Commission's accounting rules do not require the tariff cost support to include lease rates (*see* Schill Decl. ¶ 16) is a bit disingenuous given (i) that those rules were developed based on the assumption that the regulated carrier would own its own transmission facilities and (ii) in this proceeding, the reasonableness of those lease costs, which account for as much as 75 percent of the Access Division revenue requirement, has now been challenged.

25. *Fourth,* Mr. Schill's claim that INS's network lease costs "are periodically tested for reasonableness based on an analysis of the costs derived from the IXC Division (*see id.*) is interesting but does not prove that INS's rates are, in fact, reasonable. The test results, if they had been made available, would clearly be relevant to such an assessment – but they have not been made available. They are not included (or even mentioned) in INS's Tariff Filings, they were not produced in connection with the pre-filing discovery process (even though that type of material was requested), and they are not attached as exhibits to Mr. Schill's declaration or INS's answering submission. Consequently, neither I nor AT&T has had an opportunity to review them.

26. *Fifth,* Mr. Schill's assertion that INS's "tariff filings do disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber" (*see id.*) is problematic in multiple respects. To begin with, the metric that Mr. Schill claims can be derived (i.e., "dividing the transport costs by the reported minutes of use") is not the metric that he uses in Table 1 to his declaration (i.e., equivalent cost per DSO mile), which I agree is the more relevant metric. Additionally, Mr. Schill's embrace of a metric based on "minutes of use" ("mous") in this part of his testimony is a little difficult to reconcile with his later criticism of the metric set forth in Table F of my presentation, which is a very similar metric (i.e., projected lease costs per projected demand or "lease cost/mou"). *See* Rhinehart Decl. ¶ 26. It should further be noted that the type of metric that Mr. Schill sets forth in Table 1, or for that matter any metric, is not, nor can it be, on a stand-alone basis, determinative of a cost's reasonableness. In order to make that determination, the metric needs to be compared to other data (such as comparable data developed for other INS services that are offered on a competitive basis). Indeed, that was the purpose of the analysis in paragraphs 16 and 17 of my initial declaration in which I compared the "DS-3 route mile rate" that the Access Division is charged to the "DS-3 route mile rate" that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** pays for transport capacity over the very route that the Access Division uses to transport the majority of the access stimulation traffic at issue in this case. As I explained, that comparison shows that the rate paid by the Access Division **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See id.* ¶ 17.

27. *Sixth,* Mr. Schill's criticism of my calculation of the DS-3 route mile rate paid by the Access Division, i.e., **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 18) is supported only by bald claims of purportedly correct computations. The generic rule of thumb that I used to convert the DS-0 route mile rate that Mr. Creveling (INS's former CFO) had provided to an equivalent DS-3 route mile rate is a simple approach that is particularly useful in situations, like this one, where more detailed information is not available. (Much of the information set forth on Mr. Schill's Table 1 is not publicly available nor does his table document the sources of the included data). It should further be noted that even with access to the data included on Table 1, Mr. Schill still used a rule of thumb **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Indeed, that rule of thumb is very similar to the rule of thumb that I used to covert the DS-0 rate that had been provided to a DS-1 value. Instead of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** I used 24, which as discussed below produces a lower DS-3 route mile rate for the Access Division, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

28. *Seventh,* Mr. Schill's criticism of the rule of thumb that I used in comparing the rate charged to the Access Division to the rates paid by GLCC does not change my bottom line conclusion that the lease rates charged to the Access Division are excessive. Indeed, the DS-3 route mile rate calculated by Mr. Schill **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** actually suggests that the gap between the

rates charged to the Access division and the rates paid by **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** is even greater. Further, Mr. Schill's testimony that the "cost of the transmission equipment used to provision a DS-3 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 23) is difficult to reconcile with the fact that INS's records show that it has provided DS-3 circuits **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Either Mr. Schill's cost calculation is wrong, or INS is selling those circuits to **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** at a significant loss. Additionally, to the extent that the Access Division is in effect paying **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that strongly suggests that the amounts paid by the Access Division are significantly above market rates, and that INS's CEA service is subsidizing INS's other transport services.

29. *Finally*, Mr. Schill's claim that it is not reasonable to directly compare the rates that the Access Division pays for transport to the rate paid by GLLC for a single point to point connection (*see* Schill Decl. ¶ 18) might have some validity if we were simply discussing traditional CEA service where the traffic at issue was somewhat evenly disbursed across INS's entire 2700 mile fiber network. But that is not the situation that exists with respect to access stimulation traffic, the majority of which moves over a limited number of point to point connections. As INS's documents show, more than **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** of the Access Division's traffic is access stimulation traffic (*see* AT&T Ex. 2, INS Worksheet (Aureon_02696-02708), at Aueron_02697-

98) and it is impossible to deny that there are not significant economies of scale in moving large volumes of traffic over a limited number of point to point connections. But none of those economies of scale, which are likely extensive, seem to be shared. Certainly, the alleged "volume discount" that INS recently offered in its tariff does not share any of those cost savings. In fact, the cost information filed in support of that rate shows that the lower rate results exclusively from INS's decision not to include "Uncollectible Revenues" in the applicable revenue requirement. *See* Rhinehart Decl. ¶¶ 12, 38 n. 48, 43, note 55.

30. In sum, rather than demonstrating that the lease costs that the Access Division pays are reasonable, Mr. Schill's declaration reinforces the conclusion that they are excessive.

C. INS's Allocation of Costs for Network Facilities

31. Mr. Schill does not dispute that the Access Division's allocated share of the costs of Cable & Wireless Facilities went from about 45% to 48% (during 2004-2008) to above 70% (in 2013-17) as shown on Table C to my initial declaration, nor does he deny that the Cable & Wire Facilities costs allocated to INS's other divisions actually declined from about $14 million in 2004 to about $5 million in 2017. Instead, he categorically declares that such comparisons are meaningless because INS's "cost allocations for the Access Division's use of [INS]'s fiber network are compliant with the Commission's accounting rules," those cost allocations "are based on the actual use of facilities provided to the Access Division" and the lease rates for those facilities "are at or below the fully distributed cost of the network facilities provided." *See* Schill Decl. ¶ 20. Mr. Schill further asserts that "[a]ny attempt to use generalized Access Division cost relationships from year to year to determine the reasonableness of one component of expense (e.g., charges for network costs) is improper, especially when the facilities being leased to the Access Division remain fairly constant from year to year." *Id.* ¶ 20. He also presents a table that

purports to show that network expense has remained fairly constant from year to year. *See id.* ¶ 26, Table 1.

32. As I have previously explained, this type of rhetoric is not a substitute for the submission of evidence that directly addresses the specific matters of concern that have been identified. Nowhere in his declaration does Mr. Schill specifically address and explain why the percentage of Cable & Wire Facilities costs allocated to the Access Division went from below 50% in 2008 to above 70% in 2013. Likewise, no explanation is provided as to why the amount of Cable and Wire Facilities cost allocated to INS's other divisions declined from about $14 million to about $5 million. And no explanation is provided as to why the Cable & Wire Facilities costs allocated to the Access Division went from almost $18 million in 2010 to less than $10 million in 2012 and then back up to almost $14 million, which does not appear to comport with Mr. Schill's claim that the facilities being leased to the Access Division "remain fairly constant form year to year." *See id.* ¶ 20. Perhaps there are reasonable explanations for these changes. However, such explanations have not been provided, and Mr. Schill's reluctance to even address them suggests a different conclusion.

33. Mr. Schill's attachment of Table 1 to his declaration certainly does not shed any light on the answers to these questions. Indeed, Table 1 raises more questions than it provides answers. To begin, Table 1 does not indicate the sources of the data set forth on Table 1, and the data do not appear to match the data set forth in INS's Tariff Filings. Moreover, to the extent that some of the data are drawn from documents that INS produced during the pre-filing discovery process, bates numbers should have been provided. In addition, explanations as to whether the data in a column was derived or assumed should have been provided. And, given

Mr. Schill's criticism of my failure to include in Table H percentages showing year to year variations (*see* Schill Decl. ¶ 39), his Table 1 should have included such percentages.[3]

34. Beyond that, an explanation should have been provided as to why the amounts set forth in the column entitled "Equivalent Cost Per DS-0 Mile" seem to be at odds with the estimate of that rate **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that Mr. Creveling provided in his deposition in the *Alpine* case. Additionally, the levels of the Equivalent Cost Per DS-0 Mile rate set forth in Table 1 do not appear to be "fairly constant from year to year." *See* Schill Decl. ¶ 20. To the contrary, there is a fair amount of variation in the rate and that variation does not seem to match the corresponding changes in INS's CEA rates. For example, in 2013 INS's projected network costs increased from about $10 million to about $14 million, its projected traffic volumes declined by about 400 million minutes, and the CEA rate was increased by about 44% (from $0.0623 per minute to $0.00896 per minute). *See* Rhinehart Decl. ¶¶ 7 (CEA rate change), 18, Table C (network costs change), 34, Table H (volume change). Yet the Equivalent Cost Per DS-0 miles appears to have decreased from $0.08523 to $0.07364, a decline of about 14 percent. That does not make sense.

35. Finally, Mr. Schill's comment that "[it] is not apparent from Mr. Rhinehart's comments or observations that this analysis was performed" (*see id.* ¶ 20) is perplexing. The analysis that he apparently is referencing is "an analysis of the cost and use of the facilities being provided." *See id.* (prior sentence). However, to do an analysis beyond the analyses included in my initial declaration (which are based either on public data or that data that INS has produced), one would need access to additional information, particularly detailed information regarding the

[3] Such percentages would have shown year to year variation as follows: an increase of about 16 percent (2010 to 2012), a decrease of about 14 percent (2012 to 2013), an increase of about 32 percent (2013 to 2014), and a decrease of 9 percent (2014 to 2016).

computation and reasonableness of the lease costs that are charged to the Access Division and how those lease costs compare to the rates that INS charges to its other customers, appropriately adjusted. But INS has not produced such material. Indeed, it does not appear to have provided all of the source data for Table 1, and it certainly has not produced the results of its purported periodic reasonableness testing of the leases costs charged to the Access Division. In short, INS has not demonstrated the reasonableness of the network costs that underlie its tariffed CEA rates.

D. INS's Calculation and Allocation of Lease Costs

36. In this section of my initial declaration, I presented three tables based on data derived from either INS's Tariff Filings or INS internal documents produced in discovery. Each of these tables set forth information relating to INS's network costs, and as I noted in my initial declaration, raised "serious questions as to the reasonableness of INS's allocation of network costs to the Access Division." *See* Rhinehart Decl. ¶ 21. Neither Mr. Schill in his declaration nor INS in its answering submission addresses or answers these questions. Instead, Mr. Schill takes issue with the relevance of each of the tables. His arguments in that regard are not soundly based.

37. In Table D, I compared lease cost forecasts produced by INS for 2010, 2012 and 2013, and expressed concern as to level of variation in those forecasts from year to year, particularly in light of the changes that INS had made in its CEA rates during the period 2010 to 2013. *See id.* ¶¶ 22–23. Rather than directly address those issues, however, Mr. Schill dismisses the comparisons set forth in Table D on the ground that that the lease cost forecasts included in Table D are not specific to the lease costs allocated to the Access Division but relate to the lease costs paid by all of INS's divisions. *See* Schill Decl. ¶ 27. Mr. Schill's criticism is unwarranted. Putting aside that these forecasts were produced by INS in response to AT&T's request for the

back-up support used by INS in preparing its 2010, 2012 and 2013 Tariff filings, Mr. Schill's concern is specifically addressed in note 32 of my declaration, where I pointed out that the year to year variation in the overall lease cost forecasts was consistent with the variation in the lease cost projections included in INS's Tariff Filings, particularly for 2012 and 2013. *See* Rhinehart Decl. ¶ 23, n.32. I also noted that a similar pattern could be seen in the Income Statement Summaries that INS had also produced in response to AT&T's requests for the back-up material. *See id.* Consequently, Mr. Schill's excuse for not specifically addressing the reasons for the changes in the forecasts and their relationship to the changes in INS's CEA rates is no excuse at all.

38. In discussing the trends reflected in the network investment data set forth in Table E, and the "lease cost/mou" data set forth in Table F, Mr. Schill adopts a similar approach. As Table E shows, INS's investment in Cable & Wire Facilities almost tripled between 2010 and 2016, which raises the question of whether the Access Division is being to ask to fund that massive new network investment, notwithstanding the fact that (i) its overall throughput is and has been in decline (during the period 2011 to 2016, demand dropped by more than a billion minutes), (ii) legitimate CEA service (what INS refers to in its work papers as "regular CEA service") has been in a steady year to year decline since at least 2008 (a decline that shows no signs of abating), and (iii) the FCC in 2011 found that access stimulation is a "wasteful arbitrage practice" that should be "curtailed." *See* Rhinehart Decl. ¶¶ 24–25, Table E. Table F, by contrast, uses the lease cost data and demand projections set forth in INS's Tariff Filings to develop the metric "lease cost/mou," which is a rough measure of the efficiency of the Access Division's CEA service. *See id.* ¶¶ 26–27, Table F. For the test periods prior to INS's 2013 Tariff Filing, the "lease cost/mou" metric declined at a rather steady pace. *See id.* ¶ 27.

Beginning in 2013, however, Table F shows that "lease cost/mou" skyrocketed, which as I explained could be the result of declining demand, an over-allocation of network costs, or both. *See id.* Rather than address that issue and the related issues raised by Table E, and present empirical data in support of his position, Mr. Schill instead simply dismisses the concerns without ever seriously addressing them.

39. In sum, the data that I presented in this section go to the heart of the issue of the reasonableness of INS's CEA rates, and in my view, present some serious questions, that neither Mr. Schill nor INS has answered.

E. INS's Allocation of Costs Between Interstate and Intrastate Traffic

40. Mr. Schill does not deny that the mix of interstate and intrastate traffic on INS's CEA network has changed dramatically, nor does he take issue with the percentages set forth in Table G to my initial declaration which show that since 2010 more than 80 percent of the Access Division's revenue requirement has been allocated to interstate CEA service, and that in 2016 about 94 percent of the Access Division's revenue requirement was so allocated. See Rhinehart Decl. ¶ 29. Instead, Mr. Schill argues that INS was under no obligation to inform the Commission of this dramatic shift (*see* Schill Decl. ¶¶ 5 ("Rhinehart's Fourth Observation"), 32), and he suggests that the change in the jurisdictional mix was due entirely to modifications in INS's billing systems and improvements in its ability to monitor interstate traffic. *See id.* ¶¶ 33–35. He further contends that that INS "does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network." *See id.* ¶ 33; *see also id.* ¶ 5.

41. To begin with, Mr. Schill's assertion that the dramatic shift in the jurisdictional mix of INS's CEA traffic was "due to upgrades in [INS]'s equipment to better track the jurisdiction of the calls on the CEA network" (*id.* ¶ 33) is not consistent with the explanation that

INS provided in its 2008 Tariff Filing where it attributed the change in its PIU factor to two factors: changes in its ability to monitor the traffic and the huge influx of access stimulation traffic that was predominately interstate in nature. *See* AT&T Ex. 17, INS 2008 Tariff Filing, at 1–2; *see also* Rhinehart Decl. ¶ 30. Given the magnitude of that influx (which appears from INS's Tariff Filings to have begun in late 2005), it seems clear that that change, and not improvements in INS's monitoring abilities, was the principal cause of the dramatic shift that is reflected in Table G to my initial declaration.

42. Further, Mr. Schill's assertion that INS has no ability to control the jurisdiction of the traffic tendered to its network (*see* Schill Decl. ¶¶ 5, 34) is not accurate. In 2005, INS entered into a series of traffic agreements with Competitive Local Exchange Carriers ("CLECs") that were not primarily engaged in the provision of Local Exchange Service, but instead were focused on building access stimulation businesses. *See* AT&T Complaint, Section I.D As Mr. Habiak explains in his initial declaration, access to INS's network was important to their success and by entering into the aforementioned traffic agreements, INS facilitated the rapid growth of access stimulation in Iowa. *See* Habiak Decl. ¶¶ 11-16; *see also* AT&T Complaint § I.D. Indeed, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** INS has facilitated their ability to engage in mileage pumping – a practice that flourished in Iowa until the Commission's *Alpine* decision was issued.

43. Finally, neither Mr. Schill nor INS responds, or even addresses, the specific potential rate manipulation issues that I identified in my initial declaration: the first involving the apparent disconnect between INS's stated Percent Interstate Use ("PIU") factor, and the second relating to INS's apparent understatement of the PIU factor associated with the access

stimulation traffic on its network.[4] *See* Rhinehart Decl. ¶¶ 32–33. As they do with respect to a number of the specific concerns that I have identified, they either ignore them entirely or dismiss them as "simply without merit." *See, e.g.*, Schill Decl. ¶ 36. But, as I have previously noted, such rhetoric is not a substitute for evidence, and INS's apparent reluctance to address the issues only serves to reinforce the conclusion that its rates are not reasonable.

F. Reliability of INS's Traffic Forecasts

44. Neither Mr. Schill nor INS deny that there has been a lot of variation in INS's test period forecasts, nor do they deny that those test period forecasts have been inaccurate. Instead, Mr. Schill asserts that "[f]orecasting traffic over a long time period is difficult, particularly when [INS] has no control over the traffic sent by other carriers over its network." *See* Schill Decl. ¶ 37. He further claims that the variation in INS's test period forecasts is "due to fluctuations in access stimulation traffic" (*see id.* ¶ 38) and contends that the INS's traffic forecasts are "more accurate than Mr. Rhinehart suggests," pointing to percentage difference calculations which in his view (at least with respect to this issue) are "more meaningful." *See id.* ¶ 39. Mr. Schill also speculates, without offering any evidentiary support, that the inaccuracies in INS's traffic forecasts is somehow the result of AT&T's transporting, on a wholesale basis, the long distance traffic of other carriers (*see id.* ¶ 42) and attempts to deflect the fact that in certain years it has over earned its authorized rate of return by pointing to instances where it either projected negative rates of return or allegedly experienced such results. *See id.* ¶ 41. As explained below, I have issues with each of these points.

[4] In its response to AT&T's discovery requests, INS notes that the reference to 78% as it related to access stimulation traffic was a typo – the 78% factor was the factor applicable to all traffic. *See* INS Objections and Responses to Complainant's First Set of Interrogatories, at 12. INS does not, however, indicate what the percentage applicable to the access stimulation traffic was, or otherwise address the specific concerns addressed in my initial declaration.

45. *First*, Mr. Schill's assertion that the test period forecasts have varied "due to fluctuations in access stimulation traffic" is, at best, an over-simplification. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Further, Mr. Schill's claim that INS has no control over the access stimulation traffic on its network (*see* Schill Decl. ¶ 37) rings somewhat hollow given that its traffic agreements with the access stimulating CLECs **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* AT&T Complaint, Section I.D.

46. *Second,* Mr. Schill's claim that on a percentage basis, INS's test period forecasts "are actually more accurate than Mr. Rhinehart suggest[ed]" (*see* Schill Decl. ¶ 39) also rings hollow. At bottom, INS's CEA rates are a function of its revenue requirement divided by its forecasted traffic. Consequently, it is important that the traffic forecasts are accurate. To the extent that the traffic forecast is underestimated, the resulting rates will be inflated (all other factors remaining constant) and vice versa.

47. As I pointed out in my initial declaration, for two test periods, INS underestimated the demand by at least 400 million, and for the test periods up to and including the 7/1/10 to 6/30/11 test period, demand was underestimated by an average of 240 million minutes per year. *See* Rhinehart Decl. ¶ 35. In all of these instances, the underestimation worked in INS's favor, and INS made no effort to adjust its rates in advance of its bi-annual tariff filings regardless of the size of the miss. That approach stands in stark contrast to the approach that INS adopted in 2013. Having overestimated the demand for CEA service by less than 200 million minutes, it did not wait to adjust its rates until its next bi-annual tariff filing. It instead made an off-year filing in 2013 and increased its rates by 44 percent (from $0.00623 per minute to $0.00896 per minute).

48. The fact that INS believed that a five percent error in its traffic forecasts was sufficient to require an off-year tariff filing completely undermines Mr. Schill's claim that the percentage differences identified in his testimony support his position that I have overstated the significance of the forecasting inaccuracies discussed in my initial declaration. In this regard, it should also be noted that all of the percentage differences that Mr. Schill calculated for test periods in which the demand was underestimated exceeded the 5 percent threshold that prompted INS's 2013 Tariff Filing, and yet in no instance (even when the percentage difference was over 31 percent) did INS adjust its rates in advance of its bi-annual tariff filing. In his declaration, Mr. Schill simply ignores these issues.

49. *Third,* Mr. Schill adopts a similar approach to the issue of INS's over-earning of its authorized rate of return in certain years. Rather than address the years identified in my declaration where INS reported that it had over-earned its authorized rate of return, he ignores those years and instead focuses on the fact that in recent years, INS has projected negative rates

of return in its Tariff Filings and alleges that in certain years it has under-earned its authorized rate of return. *See* Schill Decl. ¶ 41. However, as I pointed out in my initial declaration, and Mr. Schill effectively admits, those negative rates of return were principally the result of INS's inclusion of "Uncollectible Revenues" in its revenue requirement. *See* Rhinehart Decl. ¶ 43. As discussed below and in my initial declaration, the inclusion of those "Uncollectible Revenues" was improper, and those amounts largely account for the negative returns identified in Mr. Schill's declaration.

50. *Fourth,* Mr. Schill's speculation that the inaccuracies in INS's traffic forecast are "likely the result of AT&T acting as the intermediate carrier for other IXCs" (*see* Schill Decl. ¶¶ 5, 42) is groundless. To begin, it is important to keep in mind that most large facilities-based carriers, like AT&T, provide intermediate carriage, and that as a consequence, the presence of wholesale traffic on a network's like AT&T's is not surprising. In fact, as noted in AT&T's Complaint, INS is both an intermediate carrier and it offers wholesale services. *See* AT&T Complaint § I.B. What is not accurate, however, is the suggestion that the alleged disappearance of the traffic of some large IXCs from INS's network is attributable to AT&T and its wholesale business. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted] **[[END HIGHLY CONFIDENTIAL]]**

51. *Finally,* Mr. Schill's claim that AT&T's wholesale business is the "only logical explanation" for the disappearance of traffic from INS's network (*see* Schill Decl. ¶ 42) is simply wrong. Another "logical explanation," and the explanation that is probably correct, is that these other carriers have found a way to bypass INS's network by delivering the traffic directly to the access stimulating CLECs' end office switches. Indeed, Mr. Schill acknowledges that INS recently learned that bypass is occurring. *See id.* ¶ 28. Rather than seek to blame AT&T for this practice and the alleged disappearance of traffic from its network, Mr. Schill and INS should instead investigate how this bypass is occurring and whether access stimulating CLECs are using either INS's internet services or INS leased capacity to transport this traffic.

G. INS's Inclusion of "Uncollectible Revenues" in its Revenue Requirement

52. Mr. Schill does not dispute that INS's inclusion of its so-called "Uncollectible Revenues" in its revenue requirement has had the potential rate impacts set forth in Table J to my initial declaration, nor does either Mr. Schill or INS deny that the inclusion of those amounts effectively required INS's other CEA customers (including AT&T prior to 2013) to pay higher rates for CEA service. *See* Schill Decl. ¶¶ 43–46; INS Legal Analysis at 61–63. He also admits that the amounts at issue relate to INS's ongoing litigation disputes with AT&T and Sprint, and **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See id.* Nevertheless, Mr. Schill insists that that those amounts were properly included in INS's revenue requirements. *See id.* I disagree with Mr. Schill's position.

53. *First,* Mr. Schill's claim that the amounts at issue were "properly billed" (*see* Schill Decl. ¶ 45) ignores the fact that both Sprint and AT&T have withheld payment on the ground that the amounts at issue were **not** properly billed and litigation as to that issue is pending. Consequently, the issue of whether the amounts were properly billed has not been settled.

54. *Second,* the assertion by Mr. Schill and INS that the amounts at issue are "known direct cost[s]" (*see id.* ¶ 44; *see also* INS Legal Analysis at 61–62) is hard to reconcile with the fact that INS is **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** In my experience, an uncollectible revenue is considered a known direct costs because the carrier has concluded that collection is not likely and **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Hence, they are not a known direct cost.

55. *Third,* Mr. Schill wholly ignores the issue of ratepayer fairness. As previously noted, he does not dispute that INS's other CEA customers have been adversely affected by the inclusion of the amounts at issue in INS's revenue requirement, nor does he explain why that is appropriate. Instead, he effectively ignores the issue and blames AT&T for exercising its right to contest INS's improper billing of its CEA rates. *See id.* ¶ 46.

56. *Finally,* Mr. Schill wholly ignores the intergenerational billing issues created by INS's inclusion in its revenue requirement of uncollected amounts that are still the subject of ongoing litigation. Presumably, if INS prevails in the litigations, it will reduce, in the future, its

revenue requirement to reflect the recovery of those amounts. But the beneficiaries of that reduction will not be the same group of ratepayers that initially bore the burden of the earlier inclusion of the "Uncollectible Revenues" in the revenue requirement. Worse yet, what happens if INS does not prevail? At that juncture will INS similarly reduce its rates even though it has not recovered the amounts at issue? What happens if INS cannot afford to do so?

57. The rules requiring that uncollectible revenues be "properly billed" and "a direct known cost" are designed to protect against these types of problems. Further, it is to avoid these types of problems that carriers, in my experience, do not include uncollectible revenues in their revenue requirements until **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

III. Conclusion

58. Contrary to Mr. Schill's claims, INS has not established that its CEA rates are reasonable, nor has it addressed and resolved the serious issues identified and documented in my initial declaration. In fact, INS's answering submission not only fails to respond adequately to the matters that have been raised, it raises additional questions, particularly with respect to the lease costs that have been allocated to the Access Division. Not only has INS not produced the back-up showing how those rates are calculated, it has not made available the reasonableness testing that allegedly is prepared on periodic basis. Additionally, it has failed to identify the source data for the information set forth on Table 1 to Mr. Schill's declaration.

PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on July 5, 2017.

Daniel P. Rhinehart

Exhibit D

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

SUPPLEMENTAL DECLARATION OF
DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"), and my job title is Directory-Regulatory. My responsibilities in that job as well as my prior experience are set forth in the initial declaration that I submitted in this proceeding on June 8, 2017. I submitted a reply declaration in this proceeding on July 5, 2017.

2. In this supplemental declaration, I have been asked to review and comment on the various discovery that has been produced by INS since the filing of my reply declaration regarding the lease costs that are allocated to INS's Access Division and that are used in developing INS's tariffed CEA rate. In that connection, I have reviewed: (a) the cover letter from INS's counsel, dated August 7, 2017 (identifying the materials that INS produced on that

date in response to AT&T's First and Second Set of Interrogatories); (b) Exhibit 1 to that letter (which identifies the actual lease rates purportedly charged to the Access Division and discusses the various reasonableness testing allegedly done by INS with respect to those lease rates);[1] and (c) various of the documents produced in connection with that letter. In addition, I attended Mr. Schill's deposition and have reviewed both the transcript of that deposition and the exhibits that were discussed at that deposition.

3. Based on that review, I have the following comments regarding the derivation and reasonableness of both the lease rates purportedly charged to the Access Division and the network costs allocated to INS's Access Division. As explained in greater detail below,

[[BEGIN HIGHLY CONFIDENTIAL]] [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[1] The August 7 Letter and Exhibit 1 were marked as Exhibit 2 to Mr. Schill's deposition and are AT&T Ex. 86.

A. **The Derivation of the Lease Rates Purportedly Charged to The Access Division.**

4. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted]

[redacted] **[[END HIGHLY CONFIDENTIAL]]**

B. **The Inability to Reconcile the CWF Lease Rates Purportedly Charged to the Access Division with the Network Costs Reported in INS's Tariff Filings.**

9. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[[END HIGHLY CONFIDENTIAL]]

C. **The Over-Allocation of CWF Fiber Costs to the Access Division**

16. **[[BEGIN HIGHLY CONFIDENTIAL]]**

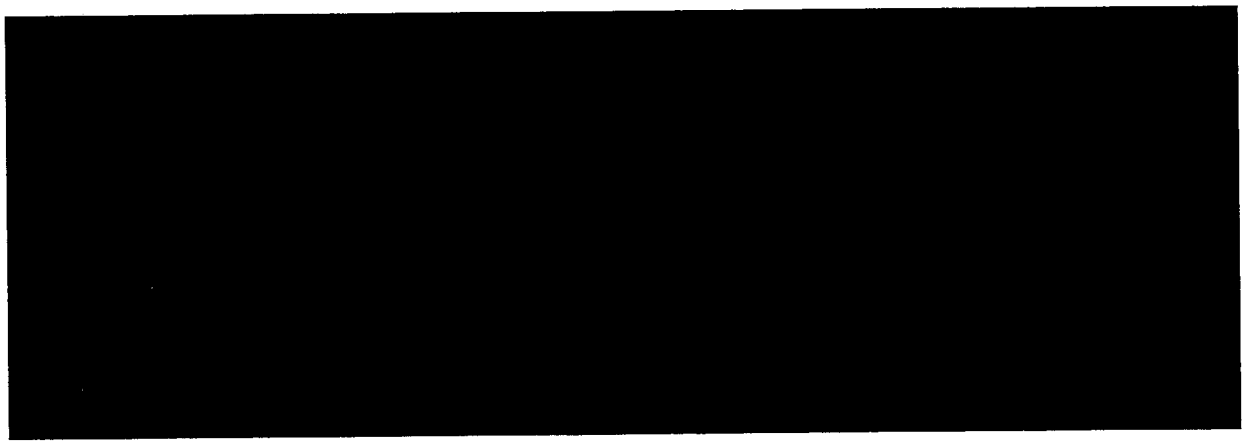
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted] [[END HIGHLY CONFIDENTIAL]]

D. **Mr. Schill's Inability to Explain the Anomalies in the Cost Data Underlying INS's CEA Rates.**

33. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted]

[[END HIGHLY CONFIDENTIAL]]

E. **The Unreliability of INS's New "Reasonableness" Test**

39. **[[BEGIN HIGHLY CONFIDENTIAL]]**

[redacted]

[redacted]

[redacted] [[END HIGHLY CONFIDENTIAL]]

PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on August 21, 2017.

Daniel P. Rhinehart

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018, I caused a copy of the foregoing Petition, as well as all accompanying materials, to be served as indicated below to the following:

Marlene H. Dortch
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
By Electronic Mail and Hand-Delivery

Kris Monteith
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
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Respectfully submitted,

/s/ Morgan Lindsay
Morgan Lindsay